

IN THE MISSOURI SUPREME COURT

PURLER-CANNON-SCHULTE, INC.,)	
and KARSTEN EQUIPMENT)	SC 85809
COMPANY,)	
)	No. ED83325
Appellants,)	
)	Appeal from the Circuit Court of
v.)	St. Charles County
)	Honorable Nancy L. Schneider
CITY OF ST. CHARLES and)	Division No. 2
MISSOURI DEPARTMENT OF)	
LABOR AND INDUSTRIAL)	Transfer from Missouri Court of Appeals
RELATIONS,)	Eastern District
)	Eastern Division
Respondents.)	

BRIEF OF *AMICI CURIAE*
MISSOURI STATE LABOR COUNCIL, AFL-CIO; AND
MISSOURI STATE BUILDING AND CONSTRUCTION TRADES COUNCIL

Respectfully submitted,

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TABLE OF AUTHORITIES

CASES:

<u>Brooks v. State of Missouri</u> 2004 WL 350943 (Mo. 2004)	4, 7, 8, 9, 10, 11
<u>ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp.</u> , 854 S.W.2d 371 (Mo. en banc, 1993)	8

STATUTES AND CONSTITUTIONAL PROVISIONS:

8 C.S.R. 30-3.060	4, 7, 8
Hancock Amendment	5, 6, 7, 8, 9, 11
Missouri Constitution Article X, Section 21	5, 7, 8
Rule 74.04, Missouri Rules of Civil Procedure	8
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Section 290.210, RSMo.	4

JURISDICTIONAL STATEMENT

Amici Curiae, Missouri State Labor Council (hereinafter “Labor Council”) and Missouri State Building and Construction Trades Council (hereinafter “Trades Council”) adopt the Jurisdictional Statement of Missouri Department of Labor and Industrial Relations (hereinafter the “Department”). Furthermore, jurisdiction is appropriate before the Missouri Supreme Court in that the Missouri Court of Appeals, Eastern District, citing “questions of general importance and interest” transferred this matter to the Missouri Supreme Court pursuant to its authority under Rule 83.02, Missouri Rules of Civil Procedure. Jurisdiction with the Supreme Court therefore, exists.

INTEREST OF AMICI CURIAE

The Missouri State Labor Council is an unincorporated Association comprised of labor organizations, including construction trades, local unions and district bodies, whose individual members perform, on a daily basis, construction work on public works projects throughout the State of Missouri. It is these public works construction projects that are regulated by 8 C.S.R. 30-3.060, (the “Occupational Title Rule”) and to which the Missouri Prevailing Wage Law, Section 290.210, RSMo., *et seq.*, applies. Thousands of individuals who are members of organizations which belong to the Labor Council, perform work on these projects on a daily basis.

The Missouri State Building and Construction Trades Council is also an unincorporated association comprised of construction trade local unions and District Councils, whose individual members perform construction work on public works projects throughout the State of Missouri. As such, the Trades Council, its member labor organizations, and their individual members are affected by the Missouri Prevailing Wage Law and by the Occupational Title Rule, as well.

Pursuant to Rule 84.05(f)(2), Missouri Rules of Civil Procedure, a partner of the undersigned counsel for *Amici Curiae* has contacted counsel for the Appellant and Respondents prior to filing its Brief before the Court of Appeals. The Court of Appeals granted leave to file the Brief in question. This supplemental Brief deals only with the application of Brooks v. State of Missouri, 2004 WL 350943 (Mo. 2004). The Brooks analysis pursuant to Missouri Constitution Article X, Section 21, relates to the issues

contained in our original Brief in this case, which dealt solely with Hancock Amendment analysis. As such, and in view of the interest of the parties to this Brief, directly relate to the case at hand, the Labor Council and Trades Council have a unique and special interest above and beyond the general importance and interest of this matter.

STATEMENT OF FACTS

The Labor Council and Trades Council adopt the Statement of Facts as announced by the Department in its Respondent's Brief. Additionally, the Labor Council and Trades Council note that nothing in the Missouri Prevailing Wage Law, in the Occupational Title Rule or in the Hancock Amendment conflict the Prevailing Wage Law or the Occupational Title Rule with the Missouri Constitution. Specifically, there is no new activity or service, or increase in the level of any activity or service required by the Missouri Prevailing Wage Law or the Occupational Title Rule. All that the Missouri Prevailing Wage Law and the Occupational Title Rule require is that the prevailing wage rate be paid for work of a similar character. Those rates change periodically through the wage determination wage process outlined in the Missouri Prevailing Wage Law.

POINT RELIED ON

- I. THE CIRCUIT COURT CORRECTLY HELD THAT THE DEPARTMENT IS ENTITLED TO SUMMARY JUDGMENT AGAINST PLAINTIFFS ON PLAINTIFFS' CLAIM THAT THE HANCOCK AMENDMENT TO THE MISSOURI CONSTITUTION WAS VIOLATED BY THE DEPARTMENT'S PROMULGATION OF 8 C.S.R. 30-3.060, BECAUSE ARTICLE X, SECTION 21 OF THE MISSOURI CONSTITUTION IS NOT VIOLATED BY THIS RULE AND BECAUSE THIS VIEW IS CONFIRMED BY BROOKS V. STATE OF MISSOURI, IN THAT THE RULE DOES NOT INVOLVE THE IMPOSITION OF A NEW ACTIVITY OR SERVICE OR AN INCREASE IN THE LEVEL OF ANY EXISTING ACTIVITY OR SERVICE BEYOND THAT REQUIRED BY EXISTING LAW, AND, THEREFORE, NO OFFICIAL STATE APPROPRIATION NEED BE MADE AND DISBURSED TO A POLITICAL SUBDIVISION.**

ARGUMENT

- I. THE CIRCUIT COURT CORRECTLY HELD THAT THE DEPARTMENT IS ENTITLED TO SUMMARY JUDGMENT AGAINST PLAINTIFFS ON PLAINTIFFS' CLAIM THAT THE HANCOCK AMENDMENT TO THE MISSOURI CONSTITUTION WAS VIOLATED BY THE DEPARTMENT'S PROMULGATION OF 8 C.S.R. 30-3.060, BECAUSE ARTICLE X, SECTION 21 OF THE MISSOURI CONSTITUTION IS NOT VIOLATED BY THIS RULE AND BECAUSE THIS VIEW IS CONFIRMED BY BROOKS V. STATE OF MISSOURI, IN THAT THE RULE DOES NOT INVOLVE THE IMPOSITION OF A NEW ACTIVITY OR SERVICE OR AN INCREASE IN THE LEVEL OF ANY EXISTING ACTIVITY OR SERVICE BEYOND THAT REQUIRED BY EXISTING LAW, AND, THEREFORE, NO OFFICIAL STATE APPROPRIATION NEED BE MADE AND DISBURSED TO A POLITICAL SUBDIVISION.**

Standard of Review:

This case, having been decided on a Motion for Summary Judgment, pursuant to Rule 74.04, Missouri Rules of Civil Procedure, the standard enunciated in ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp., 854 S.W.2d 371 (Mo. en banc, 1993), applies.

Here, the movant (the Defendant) was entitled to summary judgment there being “no genuine issues of material fact” and the movant being “entitled to judgment as a matter of law.” 854 S.W.2d at 377. To be a “genuine” issue of fact, “the issue, or dispute must be a real and

substantial one – one consisting not merely of conjecture, theory and possibilities.” 854 S.W.2d at 378.

Application of Brooks v. State of Missouri to this Case:

This supplemental *Amici Curiae* Brief deals solely with the application of Brooks v. State of Missouri to this case. In Brooks, the new legislative Act, the Concealed-Carry Act, required sheriffs to charge a non-refundable fee for the issuance of concealed weapons licenses. The difficulty with this was that the fee was paid to the “credit of the sheriff’s revolving fund”, which, under law, could only be used for the purchase of equipment and training. Therefore, Plaintiffs argued that the new activities and costs associated with issuing the licenses were not fully funded and the Act was therefore violative of Hancock. The unfunded mandate issue, which was the key to the finding of a Hancock violation with respect to Jackson, Cape Girardeau, Greene and Camden Counties, does not apply here. Unlike Brooks, which required licensing for concealed weapons, a new activity, there are no new or increased activities or services imposed by the Occupational Title Rule. Instead, all the Rule does is precisely defined in the Occupational Titles for which certain corresponding wage rates have to be paid under the already existing Prevailing Wage Law. As such, no new activities or services are created and there is no Hancock Amendment violation.

Consequently, the summary judgment rendered for Respondents is even more correct when viewed in light of Brooks.

CONCLUSION

For the above-stated reasons and law, it is again respectfully submitted that the trial court correctly found that the Hancock Amendment was not violated by the promulgation of the Occupational Title Rule, and that the case of Brooks v. State of Missouri supports this decision.

CERTIFICATE OF COMPLIANCE

CERTIFICATE UNDER RULE 84.06(C)

MISSOURI RULES OF CIVIL PROCEDURE

COMES NOW Ronald C. Gladney, attorney for *Amici Curiae*, and submits his Certificate stating as follows:

1. I, Ronald C. Gladney, attorney for *Amici Curiae* in the above-styled matter state that my address is 4399 Laclede Avenue, St. Louis, Missouri 63108, Missouri Bar No. 28160, and telephone number 314-531-1054.

2. The Brief filed herewith in the above-styled matter complies with the limitations contained in Rule 84.06(b), Missouri Rules of Civil Procedure and said Brief contains 122 lines of monospaced type in the Brief and 1,144 words.

3. A floppy disk is filed herewith which has been scanned for viruses and is virus-free to the knowledge of the undersigned. Floppy disk versions of the Brief have been transmitted to all opposing counsel as well.

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CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that two (2) copies of the foregoing “Brief of *Amici Curiae*” was served on the following parties, by placing same, postage prepaid in the U.S. mails, this _____ day of _____, 2004.

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